

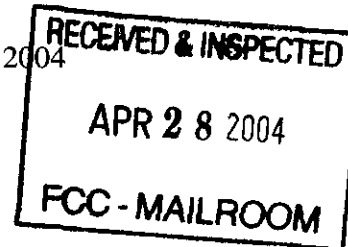
EX PARTE OR LATE FILED
CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

ORIGINAL

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
GOVERNMENT AFFAIRS

1615 H STREET, N.W.
WASHINGTON, D.C. 20062-2000
202/463-5310

April 23, 2004



Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D C. 20554

Re: Ex Parte Comments on CG Docket No. 02-278, FCC 03-208, *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*

Dear Chairman Powell:

The U.S. Chamber of Commerce (Chamber), the world's largest business federation, representing more than three million businesses of every size, sector, and region, submits these comments on the Federal Communications Commission's (FCC) review of the *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, and specifically the provisions that address regulation of commercial facsimile transmissions.

On August 8, 2003, the Chamber joined a coalition of business associations that requested a stay of the commercial fax rules. The Chamber applauds the FCC's decision to grant a stay until January 1, 2005. During this interim period, we request that the FCC weigh the economic impact these proposed rules would have on the American business community, especially small businesses, and reconsider its decision to amend the current commercial fax rules. The Chamber asks that the FCC retain the current notice requirements for commercial faxes, which includes the *Established Business Relationship Exception*.

In order to evaluate the impact of the proposed commercial fax rules, the Chamber conducted a survey of its small business members in February 2004. Of the 1,735 businesses that responded to the survey, ninety-five percent were small businesses with 100 or fewer employees; while nearly three-quarters of the total respondents had fewer than 20 employees.

The cost of the proposed rules would be devastating. The average cost to obtain and maintain written consents would be \$5,000 in the first year and more than \$3,000 each year thereafter. It would take an estimated 27 hours of staff time to obtain the initial written consent from customers and an additional 20 hours each year to keep those forms current. As you can see, these figures greatly exceed the FCC's own estimates as provided in the proposed rule. The complete survey results are attached for your review.

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Honorable Michael K. Powell

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The U.S. Chamber appreciates this opportunity to submit comments and thanks the FCC for considering the views of the U S. business community on this most important subject. We look forward to meeting with you to further discuss the results of our survey.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Bruce Josten", with a stylized, flowing script.

R. Bruce Josten

Attachment(s)

cc: Commissioner Kathleen Q. Abernathy, with attachments
Commissioner Michael J. Copps, with attachments
Commissioner Kevin J. Martin, with attachments
Commissioner Jonathan S. Adelstein, with attachments



U.S. CHAMBER OF COMMERCE

Economic Costs of the No Fax Rule on Small Businesses

The Federal Communications Commission (FCC) recently proposed a new regulation that would require businesses and nonprofit organizations to obtain written consent from their customers and members before sending faxes advertising goods, services, and memberships. In order to evaluate the impact of the FCC proposal, the U.S. Chamber of Commerce conducted a survey of its small business members in February 2004. The results of the survey are summarized below:

Background

- Of the 1,735 businesses that responded to the survey, ninety five percent were small businesses with 100 or fewer employees, while nearly three-quarters have fewer than 20 employees.
- The businesses surveyed spanned all industries with Manufacturing, Trade Association/Chambers of Commerce, Construction, and Retail industries comprising nearly two-thirds of all respondents.

Economic Costs and Burdens

- The cost to the average small business would be at least \$5,000 in the first year under the new regulation and more than \$3,000 each year thereafter.
- Small business owners indicated that it would take, on average, more than 27 hours of staff time to obtain the initial written consent from their customers and an additional 20 hours each year to keep the forms current – this far exceeds the FCC's estimate that paperwork compliance would take 30 minutes
- The regulations would have a significant economic impact on a substantial number of small businesses, requiring nearly two-thirds of small businesses to obtain written consent for more than 100 separate fax numbers in the first year of implementation.
- Other negative impacts reported include, an increase in the time it takes to complete projects (84% of respondents), decreased communications with customers (79%), the loss of potential business opportunities (66%), and the loss of existing customers (44%).



U.S. CHAMBER OF COMMERCE

2004 No Fax Rule Survey Results

The U S Chamber of Commerce conducted a survey of its members in February 2004 in order to analyze and suggest improvements to the Federal Communications Committee's (FCC) proposal to restrict the use of commercial fax machines, including faxes between businesses and their pre-existing customers/members without their written consent. The survey consisted of seven multiple-choice questions, with no incentive for completion. Of the 20,000 members the survey was faxed to, 1,735 individuals participated. The extremely impressive 8.7% response rate is also a good indication of the importance of this topic to Chamber members

About the respondents

- Of the respondents who indicated a company size, 95% have 100 or fewer employees; while nearly three-quarters have fewer than 20 employees.
- Manufacturing, Trade Association/Chambers of Commerce, Construction, and Retail industries together comprise nearly two-thirds of all respondents.

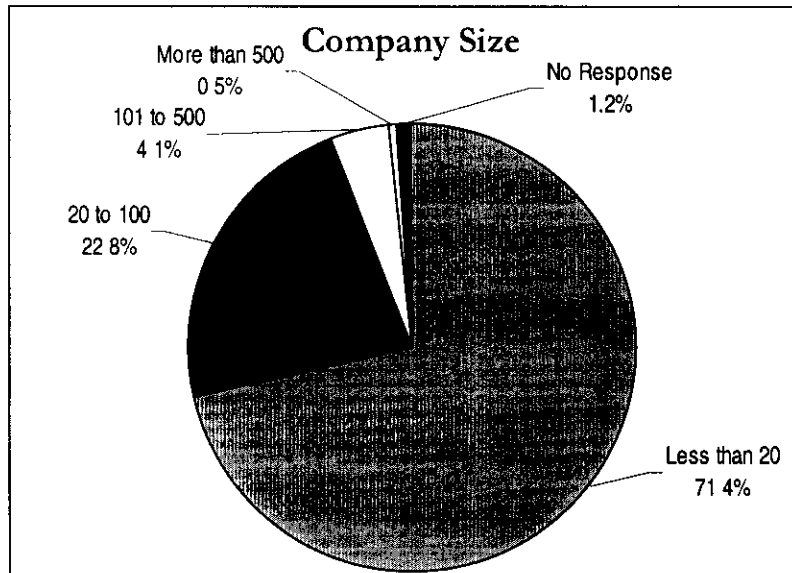
Highlights & Trends

- Nearly one-third of all respondents sent faxes to at least 500 different fax numbers in 2003; 30.6% of small companies (100 or fewer employees) and 55.5% of medium to large companies (over 100 employees)
- Over half of the responding Trade Associations/Chambers of Commerce sent faxes to at least 500 different fax numbers in the past year, which is substantially greater than the respondents in the other industry categories. The next highest industry categories were Wholesale at 47%; Communications at 45%; and Transportation at 38%.
- Respondents are estimating it will take a substantial amount of time obtaining and maintaining a written consent from every authorized person to each number they send a fax to. Over 26% of small and 56% of medium/large businesses believe it would take 40 hours or more just to obtain a written consent; and over half of those estimate more than 100 hours. Furthermore, maintaining written consent is also predicted to take a great deal of time, 27% of small and 41% of medium/large respondents believe it would take 40 hours or more annually.

- The time involved in obtaining and maintaining a written consent translates into considerable costs as well. Approximately 28% of the small companies estimate an annual cost of over \$2,000 to maintain the written consent; that figure jumps to 54% for medium/large businesses.
- Aside from the hard costs of obtaining and maintaining the written consent, there is a great deal of costs involved that aren't so easily quantified. For example, if restrictions are placed on commercial faxes, a large majority of both small and medium/large businesses predict an increase in time to complete projects (84% vs 85%, respectively) and a decrease in communication with customers (79% vs 81%, respectively). Furthermore, over half of all respondents foresee a decrease in communication with vendors/suppliers (76%), a loss of potential business opportunities (66%) and an increase in marketing cost (54%)
- While small and medium/large businesses are surprisingly in agreement in the negative impacts they foresee in their business if restrictions are placed on commercial faxes, there are two areas with slight differences. In particular, more medium/large businesses generally predict a decrease in communications with vendors/suppliers than small businesses (87% vs 75%), as well as an increase in legal fees (46% vs. 37%).
- Certain industries are nearly unanimous in their prediction of the negative impacts of fax restrictions, with a few notable exceptions:
 - A higher percentage of Trade Associations/Chamber of Commerce foresee a negative impact through a decrease in communication with customers than the industry average (94% vs 79%, respectively), through increased marketing costs (82% vs. 54%, respectively), and through a loss of existing customer base (60% vs. 44%)
 - Trade Association/Chambers of Commerce respondents predict less of an impact from a decrease in communication with vendors/suppliers at 52% vs the industry average of 76%, and less impact from an increase in legal fees at 28% vs. average of 37% for all respondents
 - Respondents from Insurance/Real Estate and those from Transportation industries were more apt to believe the new fax restrictions would lead to a loss of potential business opportunities (80% and 76%, respectively) than was indicated by the average participant at 66%

Respondent Demographics

1. How many employees does your business employ?



2. Which category best classifies your industry?

Industry	No. of Respondents	% of Respondents
Manufacturing	296	17.1%
Trade Association / Chamber of Commerce	290	16.7%
Construction	248	14.3%
Retail	179	10.3%
Professional/Scientific/Technical Services	114	6.6%
Health Care	81	4.7%
Wholesale	81	4.7%
Transportation	72	4.1%
Agribusiness	66	3.8%
Insurance/Real Estate	62	3.6%
Finance	32	1.8%
Communications	20	1.2%
Hospitality	17	1.0%
Education	3	0.2%
Other	131	7.6%
No Response	43	2.5%

3. In 2003, did you or your staff send or receive faxes in the course of doing business?

	% of Respondents
Yes	99.4%
No	0.1%
No Response	0.5%

Company Faxing Requirements

The following presents data from only those respondents who have sent or received faxes in the course of doing business in 2003. Additionally, percents for each table reflect only the respondents who provided a response to question. Where data is presented by company size, small is defined as those companies with 100 or fewer employees; medium-large are those with over 100 employees.

Number of Faxes

4. To approximately how many different fax numbers did you or your staff send faxes in 2003?

Number of faxes sent in 2003	Size of Company		
	All Respondents	Small	Medium/Large
1 to 5	1.3%	1.4%	0%
6 to 20	6.7%	6.8%	2.5%
21 to 100	27.5%	28.6%	7.4%
101 to 500	32.8%	32.6%	34.6%
501 to 1,000	14.7%	14.5%	21.0%
1,001 to 5,000	13.2%	12.8%	22.2%
More than 5,000	3.8%	3.3%	12.3%

Approximate number of faxes sent or received in 2003 by industry

Number of faxes sent or received by businesses in 2003	Industry												
	Agribusiness	Communications	Construction	Finance	Health Care	Hospitality	Insurance/ Real Estate	Manufacturing	Professional/ Scientific/Technical Services	Trade Assoc./ Chamber	Retail	Transportation	Wholesale
1 to 5	3.1%	0%	2.4%	3.1%	0%	0%	1.6%	3%	1.8%	0%	2.8%	1.4%	0%
6 to 20	15.4%	15.0%	5.3%	3.1%	11.3%	20.0%	0%	5.1%	8.0%	1.0%	13.6%	5.6%	1.3%
21 to 100	40.0%	25.0%	38.6%	15.6%	42.5%	20.0%	25.8%	22.3%	32.7%	10.5%	36.7%	25.4%	17.7%
101 to 500	18.5%	15.0%	32.9%	43.8%	22.5%	33.3%	38.7%	35.5%	32.7%	35.3%	35.0%	29.6%	34.2%
501 to 1,000	12.3%	15.0%	9.3%	9.4%	11.3%	0%	16.1%	16.2%	10.6%	26.9%	7.3%	21.1%	15.2%
1,001 to 5,000	9.2%	15.0%	8.5%	18.8%	7.5%	26.7%	16.1%	15.2%	12.4%	21.7%	4.0%	12.7%	21.5%
More than 5,000	1.5%	15.0%	2.8%	6.3%	5.0%	0%	1.6%	5.4%	1.8%	4.5%	6%	4.2%	10.1%

Staff Time and Costs Obtaining/Maintaining Written Consent

5. How much staff time do you estimate it would take to obtain and maintain a written consent from every authorized person to each number you send a fax to?

Time of Written Fax Consent	Initial			Annual		
	All Respondents	Small	Medium/Large	All Respondents	Small	Medium/Large
Less than 30 mins.	8.7%	8.9%	5.0%	10.2%	10.2%	9.1%
30 mins. to 59 mins.	8.5%	8.5%	7.5%	9.9%	9.9%	9.1%
1 hr. to 2.9 hrs.	9.8%	9.7%	10.0%	12.2%	12.5%	5.2%
3 hrs to 4.9 hrs.	7.9%	8.2%	2.5%	9.5%	9.8%	5.2%
5 hrs. to 9.9 hrs.	9.9%	10.2%	2.5%	10.5%	10.6%	9.1%
10 hrs. to 39.9 hrs.	17.9%	18.1%	16.3%	19.7%	19.7%	20.8%
40 hrs. to 100 hrs.	19.5%	19.3%	21.3%	16.9%	16.5%	23.4%
More than 100 hrs.	17.8%	17.1%	35.0%	11.2%	10.8%	18.2%
Total	100%	100%	100%	100%	100%	100%

Time of Written Fax Consent	Initial		Annual	
	All Respondents	Trade Associations/Chambers of Commerce	All Respondents	Trade Associations/Chambers of Commerce
Less than 30 mins.	8.7%	2.1%	10.2%	2.9%
30 mins. to 59 mins.	8.5%	3.9%	9.9%	5.8%
1 hr. to 2.9 hrs.	9.8%	3.9%	12.2%	6.1%
3 hrs to 4.9 hrs.	7.9%	3.2%	9.5%	7.2%
5 hrs. to 9.9 hrs.	9.9%	7.7%	10.5%	11.2%
10 hrs. to 39.9 hrs.	17.9%	22.5%	19.7%	26.6%
40 hrs. to 100 hrs.	19.5%	30.6%	16.9%	25.2%
More than 100 hrs.	17.8%	26.1%	11.2%	15.1%
Total	100%	100%	100%	100%

6. How much total cost do you estimate it would take to obtain and maintain a written consent from every authorized person at each number you send a fax?

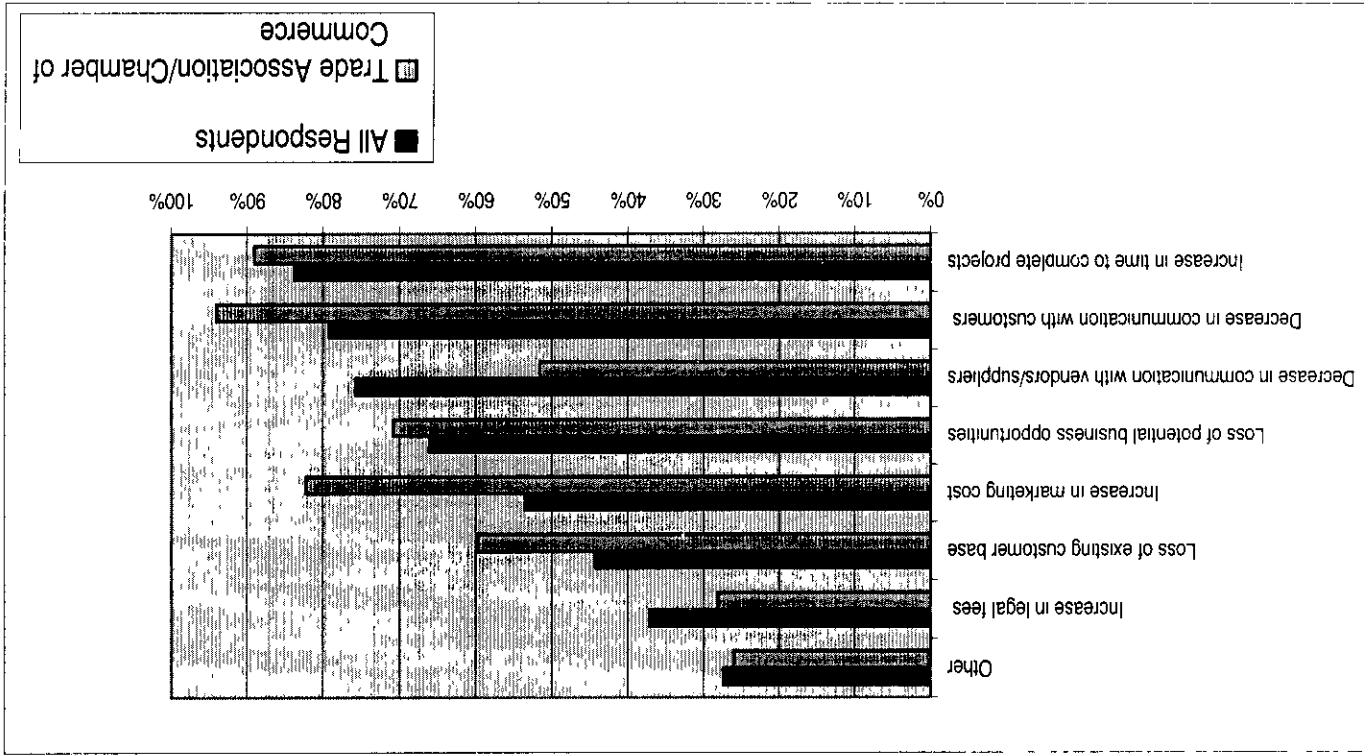
Cost of Written Fax Consent	Initial			Annual		
	All Respondents	Small	Medium/ Large	All Respondents	Small	Medium/ Large
Less than \$50	12.5%	12.7%	5.1%	14.0%	14.3%	5.1%
\$50 to \$99	7.9%	8.3%	1.3%	10.7%	11.0%	6.3%
\$100 to \$499	19.9%	20.7%	7.6%	23.3%	24.3%	7.6%
\$500 to \$1,999	23.5%	23.8%	16.5%	22.7%	22.7%	22.8%
\$2,000 to \$4,999	15.8%	16.2%	11.4%	14.7%	14.1%	22.6%
\$5,000 to \$14,999	10.1%	9.3%	25.3%	6.2%	5.8%	11.4%
\$15,000 to \$24,999	4.4%	3.9%	12.7%	3.7%	3.4%	8.9%
\$25,000 to \$49,999	3.4%	3.0%	10.1%	3.0%	3.0%	3.8%
\$50,000 to \$99,999	1.4%	1.3%	3.8%	0.9%	0.7%	3.8%
\$100,000 to \$250,000	0.7%	0.6%	3.8%	0.3%	0.3%	1.3%
More than \$250,000	0.4%	0.3%	2.5%	0.4%	0.3%	2.5%
Total	100%	100%	100%	100%	100%	100%

Cost of Written Fax Consent	Initial		Annual	
	All Respondents	Trade Associations/ Chambers of Commerce	All Respondents	Trade Associations/ Chambers of Commerce
Less than \$50	12.5%	6.0%	14.0%	7.1%
\$50 to \$99	7.9%	3.9%	10.7%	7.8%
\$100 to \$499	19.9%	23.9%	23.3%	30.4%
\$500 to \$1,999	23.5%	29.1%	22.7%	25.4%
\$2,000 to \$4,999	15.8%	17.2%	14.7%	14.8%
\$5,000 to \$14,999	10.1%	10.2%	6.2%	7.4%
\$15,000 to \$24,999	4.4%	3.9%	3.7%	2.8%
\$25,000 to \$49,999	3.4%	2.8%	3.0%	2.1%
\$50,000 to \$99,999	1.4%	2.1%	0.9%	1.4%
\$100,000 to \$250,000	0.7%	1.1%	0.3%	0.4%
More than \$250,000	0.4%	0%	0.4%	0.4%
Total	100%	100%	100%	100%

7. If restrictions are placed on commercial taxes, what negative impact(s) on your business do you foresee?

Potential Negative Impacts		Size of Company		
	All Respondents	Small	Medium-	Large
Increase in time to complete projects	83.8%	83.8%		84.6%
Decrease in communication with customers	79.2%	79.2%		80.8%
Decrease in communication with vendors/suppliers	75.8%	75.4%		87.2%
Loss of potential business opportunities	66.1%	66.5%		62.8%
Increase in marketing cost	53.5%	53.6%		55.1%
Loss of existing customer base	44.3%	44.2%		46.2%
Increase in legal fees	37.1%	36.8%		46.2%
Other	27.4%	27.4%		30.8%

Potential negative impacts by All Respondents vs. Trade Associations/Chambers



Potential Negative Impacts	Industry												
	Agribusiness	Communications	Construction	Finance	Health Care	Hospitality	Insurance/ Real Estate	Manufacturing	Professional/ Scientific/Technical Services	Trade Assoc./ Chamber	Retail	Transportation	Wholesale
Increase in time to complete projects	79.0%	88.9%	84.3%	83.9%	80.3%	80.0%	93.4%	82.8%	82.4%	89.0%	82.2%	88.1%	74.4%
Decrease in communication with customers	77.4%	83.3%	76.2%	74.2%	56.3%	73.3%	86.9%	79.9%	72.2%	94.0%	63.2%	83.6%	88.5%
Decrease in communication with vendors/suppliers	79.0%	83.3%	87.2%	87.1%	77.5%	66.7%	78.7%	80.3%	74.1%	51.6%	85.3%	76.1%	83.3%
Loss of potential business opportunities	54.8%	55.6%	70.2%	64.5%	49.3%	60.0%	80.3%	67.7%	56.5%	70.8%	62.0%	76.1%	59.0%
Increase in marketing cost	56.5%	66.7%	47.7%	48.4%	33.8%	46.7%	60.7%	53.0%	39.8%	82.2%	45.4%	38.8%	57.7%
Loss of existing customer base	40.3%	38.9%	38.3%	64.5%	32.4%	40.0%	55.7%	38.7%	35.2%	59.8%	39.3%	44.8%	50.0%
Increase in legal fees	33.9%	50.0%	41.7%	51.6%	40.8%	40.0%	47.5%	38.7%	39.8%	28.1%	33.1%	40.3%	46.2%
Other	30.6%	22.2%	26.0%	32.3%	35.2%	46.7%	18.0%	28.3%	33.3%	26.0%	22.7%	26.9%	26.9%